

BEFORE THE HEARING EXAMINER FOR THE CITY OF RENTON

RE: Lake to Sound Regional Trail

Shoreline Substantial Development
Permit, Shoreline Conditional Use
Permit and Shoreline Variance

LUA15-000257 SSDP, S-CUP, S-V

FINAL DECISION

Summary

The applicant is requesting approval of a shoreline substantial development permit (“SSDP”), shoreline conditional use permit (“SCUP”) and shoreline variance to improve an existing informal 1.2-mile trail with a 12-foot wide paved trail and new pedestrian bridge over the Black River.

Testimony

Kris Sorenson, City of Renton planner, summarized the staff report. In response to examiner questions, Vanessa Dolbee, Renton planning manager, noted that although the wetland impacts are addressed through shoreline regulations, compliance with all shoreline regulations would assure compliance with any applicable critical area regulations if critical area regulations were applied to the proposal. Mr. Sorenson noted that the proposed trail will not go beyond the footprint of the existing trail. He also confirmed that the proposed trail improvements will not adjoin any residences.

Jason Rich, applicant, noted that the applicant has exceeded tree replacement standards. In response to examiner questions, Jenny Bailey, applicant engineer, clarified that the 1000 most westerly feet are within the floodplain and that there is a net cut within the floodplain such that storage capacity is increased by the project.

1 Suzanne Krom, president of Herons Forever, testified that Black River consists of 93 acres of open
2 space surrounded by urban development. It was subject to one of the largest outlays ever made for
3 purchasing open space, eight million dollars. Black River provides a rich oasis for the animals living
4 there and is a refuge for hundreds of people who visit every year. The herons of Black River are part
5 of a distinct subspecies that is unique to the area. The subspecies does not interbreed with other
6 heron subspecies. The subspecies is located between Olympia and Alaska but 85-95% are located in
7 the Puget Sound Area and the Frasier River area. Both areas have experienced tremendous growth so
8 habitat has been compromised. The subspecies population has declined as monitored in the Frasier
9 River area. The proposal will bring significantly more people to the north side of the Black River
10 along with dogs. It's critically important to keep the users to the trail. There are a number of other
11 sensitive species located in the Black River area as well. The Black River riparian forest is one of the
12 last lowland riparian forests in the Puget Sound area. In order to protect the heron and other wildlife
13 of the Black River forest, a number of measures should be taken including fencing, signage and
14 replanting. An adaptive management plan should be included that includes ten year monitoring. City
15 of Renton Parks Planning and Natural Resources Director, noted that if adaptive management for ten
16 years is required it would be preferable to limit yearly monitoring to the first five years and every
17 other year thereafter. The parties to the project have also not determined yet who will be responsible
18 for long term maintenance and repair. Vanessa Dolbee noted that City regulations require five year
19 monitoring with a contingency plan that identifies what corrective actions are required should
20 mitigation fail. She also noted that staff do not recommend conditions requiring compliance with
21 mitigation measures proposed in studies prepared by the applicant because those recommended
22 mitigation measures are considered part of the proposal. Ms. Krom noted that ten year monitoring is
23 necessary for this project because replanting has historically not been very successful in the Black
24 River forest area.

25 Exhibits

26 The February 16, 2016 staff report and Exhibits 1-42 identified at page 2 of the staff report were
admitted into the record during the hearing. The staff power point was admitted as Exhibit 43. City
of Renton mapping software at the City of Renton webpage was admitted as Exhibit 44.

FINDINGS OF FACT

Procedural:

1. Applicant. King County Department of Natural Resources and Parks.
2. Hearing. A hearing was held on February 16, 2016 at 1:00 pm in the City of Renton Council Chambers.
3. Project Description. The applicant is requesting a shoreline substantial development permit ("SSDP"), shoreline conditional use permit ("SCUP") and shoreline variance to improve an existing informal 1.2-mile trail with a 12-foot wide paved trail and new pedestrian bridge over the Black

1 River. The 1.2 mile trail is a portion of what will ultimately be the 16-mile Lake to Sound Trail.
2 There is an existing trail where the proposed improvements will be made but it is not fully improved
3 to accessibility standards or with a paved surface. The 1.2-mile segment is referred to as Segment A
4 of the Lake to Sound Trail. Segment A extends from the Starfire Sports Complex in Fort Dent Park
5 to Naches Avenue SW. Most of the trail segment is within the City of Renton, with the municipal
6 limit roughly between the two sets of railroad tracks west of Monster Road. This decision is limited
7 to addressing and approving the portion of the 1.2 mile trail located in the City of Renton. The
8 proposed trail is typically 12 feet of asphalt pavement bounded by two 2-foot-wide shoulders and 1-
9 foot-wide clear zones, in accordance with American Association of State Highway and Transportation
10 Officials' (AASHTO) guidelines. The trail section is 14,317 feet long and 12 feet wide for a total
11 paved footprint area of 3.94 acres. With the addition of two-foot shoulders on either side, the trail
12 footprint is 5.26 acres. Between Fort Dent Park and Monster Road, the trail alignment lies south of
13 the Black River. The westernmost 600 feet of the proposed trail alignment is on maintained lawns
14 associated with Fort Dent Park. It follows a dirt footpath that joins an existing dirt road beneath the
15 railroad bridges for 650 feet. The 150 feet west of Monster Road is on existing paved surfaces. The
16 proposed trail alignment crosses over the Black River using a new pedestrian bridge. The eastern
17 three-quarters of the proposed trail alignment from Naches Avenue SW to Monster Road follows an
18 existing gravel maintenance road south of the BNSF east-west railroad tracks and north of the Black
19 River, along the northern perimeter of the Black River Riparian Forest, and within wetland buffer
20 areas. The east trail terminus is located at a cul-de-sac on Naches Avenue SW near an office park.
21 The project is estimated at about \$3,000,000 and would take approximately 12 months to complete.
22 The project is subject to federal funding through Washington State Department of Transportation and
23 the Federal Highway Administration and therefore requires federal regulatory review in addition to
24 local jurisdictional review by the Cities of Tukwila and Renton.
25
26

16 The SSDP application is for developing the trail within the shoreline jurisdiction of the Black River.
17 The SCUP application is required for any trails within the Natural shoreline environment designation.
18 The variance request is to allow a deviation from trail standards that apply to trails in shoreline
19 wetlands and wetland buffers. Specifically, the variance request is to allow a greater width for a trail,
20 an impervious asphalt surface, and for the trail to be allowed within the inner 50 percent of wetland
21 buffers. Per RMC 4-3-050D.2.d.ix.f, Recreational Activities which do not significantly affect the
22 function of the wetland or regulated buffer may be permitted within Category II, III, or IV wetlands or
23 their buffers and within a Category I wetland buffer if the following criteria are met: (1) Trails shall
24 not exceed 4 feet in width and shall be surfaced with gravel or pervious material, including
25 boardwalks; (2) The trail or facility is located in the outer 50 percent of the buffer area unless a
26 location closer to the wetland edge or within the wetland is required for interpretive purposes; (3) The
trail or facility is constructed and maintained in a manner that minimizes disturbance of the wetland
or buffer. Trails or facilities within wetlands shall be placed on an elevated structure as an alternative
to fill; (4) Wetland mitigation in accordance with subsection D2dx of this Section. The applicant is
requesting a Variance from criteria numbers 1 and 2 of RMC 4-3-050D.2.d.ix.f so that the proposed
trail improvement can be greater than 4 feet in width, surfaced with asphalt, and within the inner 50
percent of wetland buffers within Category II, III, and IV wetlands associated with the project.

Segment A, as well as the longer Lake to Sound Trail, is part of a Regional Trail System that provides non-motorized, alternative transportation and a recreational corridor for multiple trail users, including bicyclists, pedestrians, skaters, and others. A goal of the Lake to Sound Trail is to provide non-motorized transportation facilities to economically disadvantaged communities in southwest King County that have been historically underserved by such facilities. Once complete, Segment A would become part of a larger planned system that would serve employment and residential centers in South King County and connect to regional trails in Seattle and the greater Regional Trail System network. Segment A would provide a much-needed trail connection between the regional growth centers of Renton and Tukwila and safe passage under the heavy rail lines. In addition to the Green River Trail, Segment A would connect to the Interurban Trail to the south, and in the future to the Cedar River Trail.

4. Surrounding Uses. The project site is surrounded by railroad right of way and commercial, industrial and recreational uses. There are no residential uses in proximity to the project site.

5. Adverse Impacts. There are no significant adverse impacts associated with the proposal. All impacts of the proposal have been thoroughly assessed and mitigated through an extensive series of studies including a Bridge Geotechnical Report, Vegetation and Wildlife Discipline Report, Critical Areas Report, Stream Discipline Report, Drainage Report, Endangered Species Act No Effect report, and NEPA Exemption by the Washington State Department of Transportation.

Overall the proposal will not adversely affect the environmental resources of the project site because the project will result in no net loss of ecological function. As demonstrated in the studies submitted by the applicant, there will be no net loss of ecological function for the following reasons:

- Impacts of the proposal are limited in magnitude because the route of the trail follows an existing gravel roadway east of Monster Road and an existing informal pedestrian path and roadway west of Monster Road. The impacts on vegetation and related elements of the natural environment are limited because the existing trail corridor has previously disturbed natural vegetation communities within the area affected by elements of the proposed trail.
- Additional impervious surface will not have an adverse impact on receiving waters or nearby wetlands due to stormwater management. The trail is a non-pollutant-generating surface.
- The trail has been located and designed to minimize impacts of additional human use of the trail corridor on affected wildlife in the vicinity. Construction activities likely to disturb nesting herons will not be allowed near the Black River heron colony during sensitive periods. Areas between the nesting colony and the trail will be planted with native trees and shrubs to provide additional visual screening for herons.
- Mitigation measures including wetland buffer restoration, plantings to further screen the heron colony, and fencing and a variety of construction mitigation recommended in the applicant's reports.

Pertinent impacts are more individually addressed as follows:

1 A. Compatibility. One of the more controversial impacts associated with public trails is
2 compatibility with adjoining residential use. However, there is no residential use in proximity to the
3 project site. The proposal will not create any discernable adverse impacts to the uses in the vicinity
4 and is fully compatible with the commercial, industrial and recreational uses that surround it.

5 B. Wetlands. There are seven wetlands located within the project area consisting of two
6 Category II, three Category III and two Category IV wetlands. The existing developed gravel road is
7 located within some of the wetland buffers and the proposed bridge will be located within a wetland
8 buffer as well. Recreational activities, including the proposed trail, is an allowed use within the
9 Category II, III, and IV wetland buffers. The applicant has mitigated all of the impacts to wetlands as
10 determined in the applicant's critical areas report, Ex. 6. Impacts to buffer areas are anticipated to be
11 approximately 21,321 square feet of permanent impacts and 5,302 square feet of temporary
12 construction impacts. The proposal incorporates 98,297 square feet of restoration area for screening
13 of the Heron colony, mitigation planting sites, and shoreline buffer vegetation conservation plantings
14 (Exhibit 31).

15 C. Stream. The project site encroaches into the shoreline jurisdiction of the Black River, a
16 Class I water, which is why the applicant must apply for the subject shoreline permits. The regulated
17 buffer is 100 feet. The stream buffers are relatively degraded and of limited widths. The Washington
18 State Department of Fish and Wildlife (WDFW) indicates that Chinook salmon, chum salmon, coho
19 salmon, steelhead trout and cutthroat trout all have been documented in the Black River within the
20 project area. No construction work is proposed waterward of the ordinary high water mark
21 ("OHWM") except for the proposed bridge. None of the bridge construction will involve ground
22 disturbance waterward of the OHWM as all of its footings will be placed landward of the OHWM.
23 The total amount of riparian buffer that would be subject to permanent impacts would be
24 approximately 31,641 square feet (0.73 acres). 5,715 square feet of this area overlaps with wetland
25 buffers. The quality of the riparian area that would be permanently displaced is low to moderate.
26 Much of the riparian impact area along the Black River consists of grass or nonnative herbaceous and
shrub species. All trees within 10 feet of the paved edge of the trail and all cottonwood trees within
20 feet of the trail will be removed in order to protect the trail surface, which will result in the
removal of 51 trees. The applicant's stream discipline report, Ex. 7, concludes that the streams in the
project area has been avoided to the maximum extent feasible by use of the existing gravel trail and
the complete avoidance of any stream filling. The report also concludes that, as proposed by the
applicant, temporarily affected areas would be restored to pre-construction conditions or better and
would support a level of riparian function that is the same, or greater, than under existing conditions.
The stream discipline report further determines that the applicant's mitigation plan would provide
equal or greater riparian function for areas adversely affected by the proposal. Broadly, the riparian
buffer component of the overall mitigation plan consists of planting native trees and shrubs within the
regulated riparian buffer of the Black River. Riparian mitigation would consist of planting in an area
where existing riparian conditions are degraded. Trees exceeding six inches in diameter that are
removed for the project would be replaced at a 2:1 ratio according to the testimony of the applicant.

1 Water quality of the stream would not be adversely affected because the trail is a non-pollution
2 generating surface and the mitigation measures incorporated into the project address erosion control
3 according to page 5-3 of the critical areas report, Ex. 6. The applicant's Technical Information
4 Report, Ex. 5, concludes that stormwater from the completed trail would sheet flow from the paved
5 trail and be intercepted or infiltrated by vegetated areas between the trail and adjoining water bodies.
Ground water would not be affected by the proposal as all proposed work is above ground except for
the bridge foundations. Groundwater levels were found to be 13.5 to 19 feet below grade.

6 D. Wildlife. There are three protected (i.e. protected by federal, state or local regulation)
7 species of wildlife present in the project area, specifically Chinook Salmon, Steelhead Trout and Bull
8 Trout. These fish are designated as threatened under the Endangered Species Act. The applicant has
9 prepared a "no effects" study, Ex. 28, and a biological assessment, Ex. 14, to assess the project
10 impacts to these protected species. Both studies conclude that as mitigated the project will have no
11 effect or is unlikely to adversely affect the threatened fish or their habitat. Beyond the replanting
12 mitigation previously discussed, a point of significance in the fish impact analysis was that no portion
of the bridge will involve any in-stream construction and light impacts will be minimized by ensuring
that the bridge is built as high above the stream as other environmental constraints allow, spanning
three feet above 100 year flood levels.

13 E. Great Blue Heron. The Great Blue Heron is not specifically listed for protection in any
14 applicable federal, state or local regulation. However, as noted in the applicant's vegetation and
15 wildlife discipline report, Ex. 8, the great blue heron is a species of special concern in British
16 Columbia due to declining productivity. Ms. Krom testified that WDFW has not had the resources to
17 monitor the Great Blue Heron in Washington State to make its own assessments on the threatened
18 status of the species. As testified by Ms. Krom and noted in Ex. 8, the Great Blue Heron that nest at
19 the project site is composed of a subspecies that is limited to an area that spans from the Puget Sound
20 area to Prince William Sound. The subspecies does not interbreed with other Great Blue Heron
21 subspecies. WDFW has prepared a number of recommendations for avoiding impacts to the Great
22 Blue Heron. One of those recommendations is to maintain a year round buffer of 656 feet from
23 nesting sites. 430 feet of the trail will encroach into this buffer, but only by a maximum
24 encroachment of 56 feet. However, these encroachments will be located in areas that are already
25 disturbed and the trail areas will not be visible to the nesting sites, even in winter. Proposed
26 mitigation includes fencing and signage to keep trail users on the trail and plantings to improve
screening and buffering. Noise from construction could adversely affect the heron, but timing
restrictions proposed for the project that have been generally recommended by WDFW will minimize
these impacts. With the WDFW management recommendations that are integrated into the project
proposal, Ex. 8 does not find that the proposal will create any significant adverse impacts to the heron
affected by the proposal.

Ms. Krom testified that she would like have a ten year monitoring plan as opposed to the five year
that is required by the City. The five year monitoring period is proscribed by RMC 4-3-
090(D)(2)(d)(x)(l). This same provision also gives staff the flexibility to extend the monitoring

1 period to ten years if circumstances identified in the provision are found to exist during the initial five
2 year monitoring period. Section 6 of the critical areas report, Ex. 6, integrates these monitoring
3 requirements, although the authority of staff to extend monitoring to ten years is not identified so this
4 will be added in the conditions of approval. There is no evidence in the record that suggests that
5 RMC 4-3-090(D)(2)(x)(l) is inadequate to mitigate impacts to the Great Blue Heron. Ms. Krom also
6 testified that the 90% construction drawings should identify the specific locations for fencing and
7 signage. Staff will be requiring the level of specificity in the 90% drawings as part of its project
8 review. To dispel any confusion, the conditions of approval will specify that the fencing and signage
9 mitigation measures recommended in the studies admitted into the administrative record are to be
10 considered conditions of approval, which in turn will be subject to code enforcement if not adequately
11 implemented by the applicant.

8 F. Flood Hazard Area. Portions of the 1.2-mile trail corridor are located in a 100-year
9 flood hazard area (Exhibit 25). The proposal would not create a need for compensatory storage. The
10 proposed bridge and abutments are designed to be above the 100-year floodplain elevation with the
11 bottom of the bridge approximate 6 feet above the floodplain base flood elevation. In the areas where
12 the trail is below floodplain elevation, approximately 217 cubic yards of fill will be placed and
13 approximately 242 cubic yards of excavation is proposed across the full 1.2-mile trail length (Exhibit
14 5, page 6-1 and Appendix F, and Exhibit 32). Within Renton, approximately 100.89 cubic yards of
15 fill and 236.39 cubic yards of excavation are proposed within the floodplain.

13 G. Steep Slopes. The staff report notes that the proposed pedestrian bridge will be “near
14 sensitive and steep slopes”. A geotechnical report has been provided to mitigate any risks associated
15 with developing within these steep slopes. Such a report has been prepared by the applicant, Ex. 9,
16 and staff have found it to adequately address the risks associated with development and use of the
17 pedestrian bridge.

17 H. Parking. No parking is allowed within the Natural shoreline environment designation.
18 Parking areas near the trail corridor are provided on either end of the 1.2 mile segment at Naches
19 Ave. SW in Renton and at Fort Dent in Tukwila. The adequacy of the parking to serve the increase in
20 trail usage created by the trail improvements and its eventual linkage to the 12 mile regional trail isn’t
21 addressed in detail by staff. In their project narrative, the applicant notes that parking is available at
22 the western terminus of the trail segment in Fort Dent Park and that the area is otherwise too sensitive
23 to provide additional parking. Given the absence of any evidence that parking is inadequate and the
24 staff determination that criteria requiring adequate parking is met by the proposal (see p. 28 of the
25 staff report), the preponderance of evidence establishes that parking is adequate.

23 I. Archaeological/Cultural Resources. Archaeological and cultural resources are
24 adequately protected from the proposal. An MDNS condition requires that construction work cease
25 and that appropriate agencies be notified should any such resources be discovered during
26 construction. Potentially interested agencies were notified of the application and did not indicate that
the project site may likely contain cultural/archaeological resources. In the absence of any other

evidence that such resources may be present, additional investigation is not necessary for the proposal.

J. Public Use/Navigation. Clearly, the proposal overall will enhance public use of the shoreline by providing direct visual access to the shoreline (the proposed bridge) and by enhancing trail facilities to increase both the types of trail use available as well the number of people who can use the trail. It does not appear that the proposal will adversely affect existing public use of the shoreline. The only conceivable negative impact would be impacts to navigation of the river, as the record does not reveal how much bridge clearance at normal stream water elevations. Given that bridge clearance is six feet during a 100 year flood, it does appear that during normal stream levels there may be adequate clearance for small boat navigation. The record does not identify whether the stream is used for boat access, but it appears that it is probably not used for that purpose. The staff report notes that normal use of the project site includes flood control through the King County Flood District's Renton Wastewater facility on the Black River, railroad rights-of-way, the existing public trail corridor, public environmental interpretive uses throughout the Black River Forest Riparian area, and preservation of shoreline ecological processes and functions. Boat use is not mentioned by staff as one of the public uses of the shoreline. For all of the foregoing reasons it is determined that the proposal will not interfere with public use of the shoreline, including boat navigation, because it is unlikely to occur at the project site and if it did, it would probably be composed of smaller boats that could pass under the bridge.

Conclusions of Law

1. Authority. RMC 4-8-080(G) classifies hearing examiner shoreline conditional use applications and shoreline variances as Type III permits. RMC 4-8-080(G) grants the Examiner with the authority to hold a hearing and issue a final decision on Type III permits, subject to closed record appeal to the City Council. Shoreline substantial development permits are classified as Type II permits by RMC 4-8-080(G), but the SSDP of this case has been consolidated with the Type III review of the conditional use and variance applications pursuant to RMC 4-8-080(C).

2. Shoreline Designation. Natural.

3. Review Criteria. An SSDP is required for the proposal because the trail qualifies as substantial development under the shoreline regulations and the trail is located within 200 feet of the OHWM of the Black River and its associated wetlands. The criteria for shoreline substantial development permits are set by RMC 4-9-190(B)(7), which requires compliance with all City of Renton Shoreline Master Program ("SMP") use regulations and substantial compliance with SMP policies. A shoreline variance is required because the applicant requests deviations from the shoreline regulations identified in Finding of Fact No. 3. RMC 4-9-190(I)(4)(b) sets the criteria for shoreline variances. A hearing examiner shoreline conditional use permit is required by Table 4-9-090(E)(1) for public hiking and bicycle trails in the Natural shoreline environment designation. The criteria for shoreline conditional use permits are governed by RMC 4-9-190(I)(5)(b). The applicable

1 regulations and policies are quoted below in italics and applied through corresponding conclusions of
2 law.

3 **SMP Policies**

4 **SMP Objective SH-F:** *Increase public accessibility to shorelines and preserve and improve the*
5 *natural amenities.*

6 4. The project increases public accessibility by replacing the existing gravel trail with a hardened
7 surface and making it wider, thus making the trail user friendly for both pedestrians and bicyclists.
8 The eventual connection of the trail segment to the 16 mile regional Sound to Lake Trail will enhance
9 the accessibility of the public to not only the Black River but the shorelines of other water bodies
10 such as Lake Washington and Puget Sound as well. As demonstrated repeatedly in the numerous
studies of environmental impacts produced by the applicant, the extensive mitigation integrated into
project design will ensure that the proposal will improve upon the ecological function of the Black
River riparian corridor.

11 **SMP Policy SH-6:** *Existing natural resources should be conserved through regulatory and*
12 *nonregulatory means that may include regulation of development within the shoreline jurisdiction,*
ecologically sound design, and restoration programs, including:

13 1. *Water quality and water flow should be maintained at a level to permit recreational use, to provide*
14 *a suitable habitat for desirable forms of aquatic life, and to satisfy other required human needs.*

15 2. *Aquatic habitats and spawning grounds should be protected, improved and, when feasible,*
16 *increased to the fullest extent possible to ensure the likelihood of salmon recovery for listed salmon*
17 *stocks and to increase the populations of non-listed salmon stocks.*

18 3. *Wildlife habitats should be protected, improved and, if feasible, increased.*

19 4. *Unique natural areas should be designated and maintained as open space for passive forms of*
20 *recreation and provide opportunities for education and interpretation. Access and use should be*
21 *restricted, if necessary, for the conservation of these areas.*

22 5. The criterion is satisfied. As determined in Finding of Fact No. 5, water quality and water
23 flow are not affected by the proposal. As further determined in Finding of Fact No. 5, the proposal
24 would be beneficial to aquatic habitat over time and is fully mitigated to prevent adverse habitat
25 impacts during construction. Wildlife habitat is increased by the proposed removal of invasive
26 vegetation and replacement with native vegetation and the addition of trees. The trail provides an
opportunity to observe and learn from the shoreline and ample preserved and protected vegetation of
the site.

SMP Policy SH-11. *Critical areas in the shoreline should be managed to achieve the planning*
objectives of the protection of existing ecological functions and ecosystem wide processes and
restoration of degraded ecological functions and ecosystem-wide processes. The regulatory
provisions for critical areas should protect existing ecological functions and ecosystem-wide
processes. In protecting and restoring critical areas within the shoreline, the City should integrate

1 *the full spectrum of planning and regulatory measures, including the comprehensive plan, interlocal*
2 *watershed plans, local development regulations, and state, tribal, and federal programs.*

3 6. As detailed in Finding of Fact No. 5, impacts to all critical areas have been fully mitigated and
4 ecological function will overall be improved by the proposal. As detailed in the staff report and the
5 numerous studies admitted into the administrative record, the critical areas have been protected via
6 the application of a full spectrum of applicable regulations.

7 **SMP Policy SH-20.** *Public access should be provided consistent with the existing character of the*
8 *shoreline and consideration of opportunities and constraints for physical and visual access, as well*
9 *as consideration of ecological functions, as provided in Policy SH-31 Table of Public Access*
10 *Objectives by Reach, and in conjunction with the following policies.*

11 7. The policy is met. The proposal involves the preservation and restoration of most of the site for
12 shoreline habitat. The relatively modest amount of the project site that will be developed will provide
13 for physical and visual shoreline access to the general public. All other policies and reach objectives
14 are satisfied as outlined below.

15 **SMP Policy SH-21:** *Public access to and along the water's edge should be available throughout*
16 *publicly owned shoreline areas although direct physical access to the water's edge may be restricted*
17 *to protect shoreline ecological values.*

18 8. The trail provides access along the Black River but not directly to the river's edge except for
19 the bridge, which passes over the edge. Given the presence of Great Blue Heron and other
20 environmentally sensitive environmental resources between the trail and the Black River, direct
21 access is appropriately restricted in order to protect shoreline ecological values.

22 **SMP Policy SH-24.** *Public access to and along the water's edge should be located, designed, and*
23 *maintained in a manner that protects the natural environment and shoreline ecological functions and*
24 *is consistent with public safety as well as compatible with water-dependent uses. Preservation or*
25 *improvement of the natural processes shall be a basic consideration in the design of shoreline areas*
26 *to which public access is provided, including trail systems.*

9. The location of the trail improvements is appropriately confined to the footprint of the
existing gravel trail in order to minimize damage to the riparian corridor and to protect sensitive
environmental resources located between the river and the existing trail corridor.

SMP Policy SH-26: *Both passive and active public areas should be designed and provided.*

10. The proposed trail provides opportunities for both active (e.g. walking/racing events) and
passive (e.g. weekend strolls) recreation.

1 **SMP Policy SH-27:** *In order to encourage public use of the shoreline corridor, public parking*
2 *should be provided at frequent locations on public lands and rights of way and may be required on*
3 *private development.*

4 11. No parking is allowed within the Natural shoreline environment designation. As noted in
5 Finding of Fact No. 5, parking areas near the trail corridor are provided on either end of the 1.2 mile
6 segment at Naches Ave. SW in Renton and at Fort Dent in Tukwila and this parking is the most that
7 can feasibly be provided for the proposal given the regulatory and environmental constraints of the
8 site.

9 **SMP Policy SH-28:** *In planning for public access, emphasis should be placed on foot and bicycle*
10 *paths consistent with the Renton Bicycle and Trails Master Plan, rather than roads, except in areas*
11 *where public boat launching would be desirable.*

12 12. The policy is well met as the paved surface will allow for multi non-motorized use as intended
13 by the applicant, which would include both bicycles and pedestrians.

14 **SMP Policy SH-31 Table of Public Access Objectives by Reach, Black River/Springbrook A:**
15 *The area west of Monster Road provides no public access. Public physical access from a trail*
16 *parallel to the water should be provided as private lands redevelop. Public agency actions to improve*
17 *public access should include acquisition of trail rights to connect the trail system to the Green River*
18 *Trail and Fort Dent Park. The area west of Monster Road is part of the publicly owned Black River*
19 *Forest where interpretive trails exist. Expansion of public access should occur only if consistent with*
20 *ecological functions. Interpretive trails are present in the Black River Forest. Expansion of public*
21 *access should occur only if consistent with ecological functions. A trail system is present on the west*
22 *side of the stream adjacent to the sewage treatment plant and should be retained and possibly*
23 *enhanced.*

24 13. The reach policy is well met, as the trail segment will connect to Fort Dent, the Interurban
25 Trail and the Green River Trail. As determined in Finding of Fact No. 5, the proposal also involves
26 extensive restoration and mitigation that will enhance ecological functions.

27 **SMP Objective SH-G:** *Water-oriented recreational activities available to the public should be*
28 *encouraged to the extent that the use facilitates the public's ability to reach, touch, and enjoy the*
29 *water's edge, to travel on the waters of the state, and to view the water and the shoreline.*

30 14. As noted in the reach objectives addressed in the preceding conclusions of law, the trail along
31 the Black River should only be expanded if consistent with ecological function. Expanding the trail
32 to provide for direct access to the Black River and associated water oriented recreational activities
33 would not be consistent with ecological function given the Blue Heron nesting sites and other
34 sensitive ecological resources located between the river and the existing trail.

35 **SMP Policy SH-32:** *Water-oriented recreational activities should be encouraged.*

15. As noted in the preceding conclusion of law, direct water access and its associated water-oriented recreational activities is not consistent with the reach specific objective of not expanding trail use if to do so would be inconsistent with ecological function. The specific reach objectives take precedence over more general shoreline policies such as Policy SH-32.

SMP Policy SH-35: *Public land, including city parks and public aquatic lands, should be managed to provide a balance of public recreation, public access to the water, and protection and enhancement of ecological functions.*

16. The proposal serves as an excellent balance of public use of shoreline open space while protecting fragile shoreline ecological resources.

SMP Policy SH-37: *Provision of recreation facilities and use shall be consistent with growth projections and level-of-service standards established by the comprehensive plan.*

17. The proposed trail improvements, width, impervious surface and location were adopted into the Renton Trails and Bicycle Master Plan in 2009. The requirements of the Master Plan are adopted as part of the City's comprehensive plan and are designed to be consistent with the rest of the plan, including its growth projections. Consequently, it is determined that the proposal is consistent with the comprehensive plan and its growth projections.

SMP Policy SH-43: *Trails should be developed to enhance public enjoyment of and access to the shoreline:*

1. Trails within the shoreline should be developed as an element of non-motorized circulation, of the City's Parks, Recreation and Open Space and Trails and Bicycle Master Plan and of the Shoreline Public Access program. Trails provide the potential for low impact public physical and visual access to the shoreline.

2. Trails should be developed as an element of a system that links together shoreline public access into an interconnected network including active and passive parks, schools, public and private open space, native vegetation easements with public access, utility rights of way, waterways, and other opportunities.

3. Public access to and along the water's edge should be linked with upland community facilities and the comprehensive trails system that provides non-motorized access throughout the City.

4. A system of trails on separate rights of way and public streets should be designed and implemented to provide linkages along shorelines including the Lake Washington Loop, the Cedar River, the Black/River Springbrook Creek, and the Green River.

18. As previously noted the proposal is integrated into and consistent with the City's Trails and Bicycle Master Plan. The trail segment links to the Green River and Interurban trails and forms a part of a 16 mile regional trail linking Lake Washington to Puget Sound. The regional trail provides the connectivity contemplated by the standard quoted above.

1 **SMP Objective SH-J:** *Provide for the timely restoration enhancement of shorelines with impaired*
2 *ecological functions. Such restoration should occur through a combination of public and private*
3 *programs and actions. This Master Program includes a restoration element that identifies restoration*
4 *opportunities and facilitates appropriate publicly and privately initiated restoration projects. The*
5 *goal of this effort is to improve shoreline ecological functions.*

6 19. As determined in Finding of Fact No. 5, the proposal involves extensive restoration that will
7 improve shoreline ecological functions. As a matter of constitutional law, the City cannot require the
8 applicant to mitigate more than the impacts it creates, and the applicant has done so with this
9 proposal.

10 **SMP Use Regulations**

11 **RMC 4-3-090(D)(2)(c)(i):** *Applicable Critical Area Regulations: The following critical areas shall*
12 *be regulated in accordance with the provisions of RMC 4-3-050, Critical Area Regulations, adopted*
13 *by reference except for the provisions excluded in subsection D2cii of this Section.. Said provisions*
14 *shall apply to any use, alteration, or development within shoreline jurisdiction whether or not a*
15 *shoreline permit or written statement of exemption is required. Unless otherwise stated, no*
16 *development shall be constructed, located, extended, modified, converted, or altered, or land divided*
17 *without full compliance with the provision adopted by reference and the Shoreline Master Program.*
18 *Within shoreline jurisdiction, the regulations of RMC 4-3-050 shall be liberally construed together*
19 *with the Shoreline Master Program to give full effect to the objectives and purposes of the provisions*
20 *of the Shoreline Master Program and the Shoreline Management Act. If there is a conflict or*
21 *inconsistency between any of the adopted provisions below and the Shoreline Master Program, the*
22 *most restrictive provisions shall prevail....*

23 *(b) Areas of special flood hazard...*

24 *(c) Sensitive slopes, twenty five percent (25%) to forty percent (40%), and protected slopes, forty*
25 *percent (40%) or greater.*

26 20. Pursuant to RMC 4-3-090(D)(2)(c)(i), quoted above, the only critical area regulations (RMC
4-3-050) that apply to the proposal are those that apply to special flood hazards and protected slopes.
As further discussed in Conclusion of Law No. 21 below, the critical area regulations pertaining to
fish habitat conservation areas do not apply because the SMP has its own regulations for fish
conservation areas located in the Natural shoreline environmental designation.

The proposal has areas of special flood hazard because as determined in Finding of Fact No. 5,
portions of the 1.2-mile trail corridor are located in the 100-year flood hazard area (Exhibit 25).
There are a couple critical area flood regulations that are pertinent to the proposal and the proposal
satisfies both of them. RMC 4-3-050(I)(2)(c)(i) requires that all new construction and substantial
improvements shall be constructed with materials and utility equipment resistant to flood damage.
Given that the trail will be primarily composed of asphalt and the proposed bridge will be comprised

1 of steel and potentially concrete (project drawings, Ex. 17, reference just steel but the geotech
2 identifies that concrete may also be used), it appears that the materials are suitably flood resistant.
3 RMC 4-3-050(I)(6)(a) requires that development proposals shall not reduce the effective base flood
4 storage volume of floodplains. As determined in Finding of Fact No. 5, the proposal will not reduce
5 flood plain storage volume.

6 The staff report and geotechnical report, Ex. 9, do not provide very clear information as to why the
7 slopes of the proposal are protected by critical area regulations. It appears that the banks of the river
8 qualify as “protected slopes”, which are defined by RMC 4-3-050(F)(5)(a)(ii) as a hillside having an
9 average slope of 40% or greater with a minimum vertical rise of 15 feet. The geotechnical report, Ex.
10 9, identifies that the banks of the Black River have an approximate grade of 50%. Project drawings,
11 Ex. 17, Sheet S-1, show a vertical rise of almost 30 feet at this slope. RMC 4-3-050(G)(2) imposes a
12 15 foot buffer from the top of protected slopes. The construction drawings identify that the project
13 likely does not comply with this buffer requirement. RMC 4-3-050(C)(3)(e)(ii) exempts “new
14 trails...facilities” from critical area regulations. Footnote 14 to this exemption clarifies that the
15 exemption applies to any facilities associated with a new trail, which would include the proposed
16 bridge. However, for an exemption to apply, RMC 4-3-050(C)(3) requires the issuance of a letter of
17 exemption. It does not appear that the administrative record evidences any issuance of a letter of
18 exemption. The conditions of approval will require that the applicant acquire either a letter of
19 exemption or in the alternative acquire a modification or variance to the 15 foot buffer standard
20 pursuant to review procedures authorized by the RMC.

21 **RMC 4-3-090(D)(2)(c)(iii):** *Critical Area Regulations for Class 1 Fish Habitat Conservation Areas:*
22 *Environments designated as Natural or Urban Conservancy shall be considered Class 1 Fish Habitat*
23 *Conservation Areas. Regulations for fish habitat conservation areas Class 1 Streams and Lakes are*
24 *contained within the development standards and use standards of the Shoreline Master Program,*
25 *including but not limited to subsection F1 of this Section, Vegetation Conservation, which establishes*
26 *vegetated buffers adjacent to water bodies and specific provisions for use and for shoreline*
modification in subsections E and F of this Section. There shall be no modification of the required
setback and buffer for non-water-dependent uses in Class 1 Fish Habitat Conservation areas without
an approved Shoreline Conditional Use Permit.

21. Since the project area is in a Natural designated shoreline environment it qualifies as a Class 1
Fish Habitat Conservation Area. Pursuant to the standard quoted above, the SMP fish habitat
conservation standards will be applied to the proposal in lieu of those adopted into the critical area
regulations (RMC 4-3-050).

RMC 4-3-090(D)(2)(d)(ix)(f) Recreational or Educational Activities: *Outdoor recreational or*
educational activities which do not significantly affect the function of the wetland or regulated buffer
(including wildlife management or viewing structures, outdoor scientific or interpretive facilities,
trails, hunting blinds, etc.) may be permitted within Category II, III, or IV wetlands or their buffers
and within a Category I wetland buffer if the following criteria are met:

- 1 *(1) Trails shall not exceed four feet (4') in width and shall be surfaced with gravel or pervious*
2 *material, including boardwalks;*
3 *(2) The trail or facility is located in the outer fifty percent (50%) of the buffer area unless a location*
4 *closer to the wetland edge or within the wetland is required for interpretive purposes;*
5 *(3) The trail or facility is constructed and maintained in a manner that minimizes disturbance of the*
6 *wetland or buffer. Trails or facilities within wetlands shall be placed on an elevated structure as an*
7 *alternative to fill;*
8 *(4) Wetland mitigation in accordance with subsection D2dx of this Section.*

9
10 22. The proposed trail improvements do not adversely affect wetland functions and they are
11 designed to minimize wetland impacts as determined in Finding of Fact No. 5. However the trail will
12 exceed four feet in width, will be impermeable and some trail improvements will be located within
13 the inner 50% of wetland buffers in violation of RMC 4-3-090(D)(2)(d)(ix)(f) as quoted above. This
14 decision approves a variance to these conflicting trail standards.

15 **RMC 4-3-090(D)(2)(d)(x):** *Wetland Mitigation Requirements: Activities that adversely affect*
16 *wetlands and/or wetland buffers shall include mitigation sufficient to achieve no net loss of wetland*
17 *function and values in accordance with subsection D7 of this Section and this subsection.*
18 *Compensatory mitigation shall be provided for all wetland alteration and shall re-establish, create,*
19 *rehabilitate, enhance, and/or preserve equivalent wetland functions and values.*

20 *(a) Preferred Mitigation Sequence: Mitigation sequencing shall take place in the prioritized order*
21 *provided for in subsection D2aiii of this Section.*

22 *(b) Consistency with Policies and Publications Required: Wetland mitigation requirements shall be*
23 *consistent with the applicable standards for studies and assessment in Chapter 6 of: Washington*
24 *State Department of Ecology, U.S. Army Corps of Engineers Seattle District, and U.S. Environmental*
25 *Protection Agency Region 10, March 2006; Wetland Mitigation in Washington State – Part 1:*
26 *Agency Policies and Guidance (Version 1); and Washington State Department of Ecology*
Publication No. 06-06-011a, Olympia, WA, except in cases when this Code provides differing
standards.

(c) Wetland alterations: Compensation for wetland alterations shall occur in the following order of
preference:

1 *(1) Re-establishing wetlands on upland sites that were formerly wetlands.*

2 *(2) Rehabilitating wetlands for the purposes of repairing or restoring natural and/or historic*
3 *functions.*

4 *(3) Creating wetlands on disturbed upland sites such as those consisting primarily of nonnative,*
5 *invasive plant species.*

6 *(4) Enhancing significantly degraded wetlands...*

7 *(e) Mitigation Ratio for Wetland Buffer Impacts: Compensation for wetland buffer impacts shall*
8 *occur at a minimum 1:1 ratio. Compensatory mitigation for buffer impacts shall include*
9 *enhancement of degraded buffers by planting native species, removing structures and impervious*
10 *surfaces within buffers, and other measures...*

11 *(i) Location: Compensatory mitigation shall be provided on-site or off-site in the location that will*
12 *provide the greatest ecological benefit and have the greatest likelihood of success; provided, that*

1 mitigation occurs as close as possible to the impact area and within the same watershed sub-basin as
2 the permitted alteration.

3 (j) Protection: All mitigation areas whether on- or off-site shall be permanently protected and
4 managed to prevent degradation and ensure protection of critical area functions and values into
5 perpetuity. Permanent protection shall be achieved through deed restriction or other protective
6 covenant in accordance with RMC 4-3-050E4.

7 (k) Timing: Mitigation activities shall be timed to occur in the appropriate season based on weather
8 and moisture conditions and shall occur as soon as possible after the permitted alteration.

9 (l) Wetland Mitigation Plans Required: Wetland mitigation plans shall be prepared in accordance
10 with RMC 4-3-050M16. All compensatory mitigation projects shall be monitored for a period
11 necessary to establish that performance standards have been met, but generally not for a period less
12 than five (5) years. Reports shall be submitted quarterly for the first year and annually for the next
13 five (5) years following construction and subsequent reporting shall be required if applicable to
14 document milestones, successes, problems, and contingency actions of the compensatory mitigation.
15 The Administrator of the Department of Community and Economic Development or designee shall
16 have the authority to modify or extend the monitoring period and require additional monitoring
17 reports for up to ten (10) years when any of the following conditions apply:

18 (1) The project does not meet the performance standards identified in the mitigation plan;

19 (2) The project does not provide adequate replacement for the functions and values of the impacted
20 critical area;

21 (3) The project involves establishment of forested plant communities, which require longer time for
22 establishment.

23 23. The criterion is met. As determined in Finding of Fact No. 5, the proposal will result in no net
24 loss of wetland function and values. Mitigating sequencing has been properly met by minimizing
25 encroachments into the shoreline and wetland buffers by limiting the trail to the existing trail
26 footprint, including measures to prevent trail users from leaving the trail area. Remaining impacts are
27 amply mitigated and compensated for by integration of extensive on-site restoration and replanting as
28 well as design features designed to keep trail users on the trail and to minimize construction impacts.
29 It is unclear from the record whether the mitigation complies with the standards from other agencies
30 as referenced in the criteria above so this will be addressed in the conditions of approval. The project
31 meets preferred mitigation methodology for alteration of wetland buffers by providing for wetland
32 rehabilitation. The mitigation ratio proposed by the Applicant is 1:1 with 2:1 for replacement of
33 removed trees. All compensatory mitigation is on-site and as close to the altered areas as possible. It
34 does not appear that any deed restrictions or similar measures are included to preserve the mitigation
35 measures into perpetuity. Although deed restrictions and the like do not appear to be as necessary for
36 publicly owned property as for private, the criterion makes no distinction between the two so
37 compliance will be made a condition of approval. Compliance with RMC 4-3-050(M)(16) is
38 addressed below. The mitigation plan proposed by the applicant, Appendix E of Ex. 6, dictates the
39 timing of mitigation, such as the timing of plantings. As detailed in Finding of Fact No. 5, as
40 conditioned the applicant's monitoring plan complies with the standards quoted above.

41 **RMC 4-3-050(M)(16): Mitigation Plans:**

1 **a. Required for Restoration, Creation and Enhancement Projects:** All wetland restoration, creation,
2 and enhancement in conjunction with restoration and creation projects required pursuant to this
3 Section either as a permit condition or as the result of an enforcement action shall follow a
4 mitigation plan prepared by qualified wetland specialists approved by the City.

5 **b. Timing for Mitigation Plan Submittal and Commencement of any Work:** See subsection F8 of
6 this Section.

7 **c. Content of Mitigation Plan:** Unless the City, in consultation with qualified wetland specialists,
8 determines, based on the size and scope of the development proposal, the nature of the impacted
9 wetland and the degree of cumulative impacts on the wetland from other development proposals, that
10 the scope and specific requirements of the mitigation plan may be reduced, the mitigation plan shall
11 address all requirements in RMC [4-8-120D23](#), Wetland Mitigation Plan, and subsection F8 of this
12 Section.

13 **d. Performance Surety:** As a condition of approval of any mitigation plan, the Reviewing Official
14 shall require a performance surety per RMC [4-1-230](#) and subsection G of this Section.

15 24. The mitigation for the project recommended in the critical areas report, Ex. 6, was prepared by
16 Parametrix, a consulting firm with numerous critical area experts well-qualified to identify, assess
17 and formulate recommended mitigation measures for impacts to critical areas. The mitigation plan
18 prepared in the critical areas report complies with the requirements of RMC 4-8-120(D)(23) and
19 RMC 4-3-050(F)(8). The timing of mitigation is dictated in the applicant's proposed mitigation
20 plan, Appendix E to Ex. 6.

21 **RMC 4-3-090(D)(2)(e): Public Access Development Standards:** Public access facilities shall
22 incorporate the following design and other features:

23 **i. Relation to Other Facilities:**

24 (a) **Preferred Location:** Public access shall be located adjacent to other public areas, accesses, and
25 connecting trails, connected to the nearest public street, and include provisions for handicapped and
26 physically impaired persons, where feasible.

(b) **Parking Requirements:** Where public access is within four hundred feet (400') of a public street,
on-street public parking shall be provided, where feasible. For private developments required to
provide more than twenty (20) parking spaces, public parking may be required in addition to the
required parking for the development at a ratio of one space per one thousand (1,000) square feet of
public access area up to three (3) spaces and at one space per five thousand (5,000) square feet of
public access area for more than three (3) spaces. Parking for public access shall include the parking
spaces nearest to the public access area and may include handicapped parking if the public access
area is handicapped accessible.

(c) **Planned Trails to Be Provided:** Where public trails are indicated on the City's transportation,
park, or other plans, construction of trails shall be provided within shoreline and non-shoreline
areas of a site.

ii. Design:

(a) **General:** Design of public access shall provide the general public with opportunity to reach,
touch, and enjoy the water's edge and to view the water and the shoreline from adjacent locations
and shall be as close horizontally and vertically to the shoreline's edge as feasible; provided, that

1 *public access does not adversely affect sensitive ecological features or lead to an unmitigated*
2 *reduction in ecological functions.*

3 *(b) Privacy: Design shall minimize intrusions on privacy of adjacent use by avoiding locations*
4 *adjacent to residential windows and/or outdoor private residential open spaces or by screening or*
5 *other separation techniques.*

6 25. As noted in Finding of Fact No. 3, the proposed 1.2 mile trail segment extends from the
7 Starfire Sports Complex in Fort Dent Park to Naches Avenue SW. The trail will provide connections
8 to the Green River and Interurban Trails and is accessible to handicapped and physically impaired
9 persons. Since parking is prohibited in the Natural shoreline environmental designation, it does not
10 appear that there is any feasible site within the vicinity of the trail segment that could be used for
11 parking. As previously noted, the proposed improvements are already identified in the City's Trails
12 and Bicycle Master Plan. As previously noted, direct public access to the shoreline is not warranted
13 for this project except for the bridge crossing because the specific shoreline reach objectives place a
14 priority over protection of sensitive environmental resources and in this case the protection of the
15 Great Blue Heron Nesting sites and perhaps the protection of riparian habitat for the protected fish
16 using the stream takes priority over and necessitates the avoidance of public disturbance of the Black
17 River riparian corridor stream habitat.

18 **RMC 4-3-090(D)(3):**

19 *a. No Net Loss of Ecological Functions:*

20 *i. No Net Loss Required: Shoreline use and development shall be carried out in a manner that*
21 *prevents or mitigates adverse impacts to ensure no net loss of ecological functions and processes in*
22 *all development and use. Permitted uses are designed and conducted to minimize, in so far as*
23 *practical, any resultant damage to the ecology and environment (RCW 90.58.020). Shoreline*
24 *ecological functions that shall be protected include, but are not limited to, fish and wildlife habitat,*
25 *food chain support, and water temperature maintenance. Shoreline processes that shall be protected*
26 *include, but are not limited to, water flow; erosion and accretion; infiltration; groundwater recharge*
and discharge; sediment delivery, transport, and storage; large woody debris recruitment; organic
matter input; nutrient and pathogen removal; and stream channel formation/maintenance.

ii. Impact Evaluation Required: In assessing the potential for net loss of ecological functions or
processes, project-specific and cumulative impacts shall be considered and mitigated on- or off-site.

iii. Evaluation of Mitigation Sequencing Required: An application for any permit or approval shall
demonstrate all reasonable efforts have been taken to provide sufficient mitigation such that the
activity does not result in net loss of ecological functions. Mitigation shall occur in the following
prioritized order:

(a) Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or
moving the action.

(b) Minimizing adverse impacts by limiting the degree or magnitude of the action and its
implementation by using appropriate technology and engineering, or by taking affirmative steps to
avoid or reduce adverse impacts.

(c) Rectifying the adverse impact by repairing, rehabilitating, or restoring the affected environment.

1 (d) Reducing or eliminating the adverse impact over time by preservation and maintenance
2 operations during the life of the action.

3 (e) Compensating for the adverse impact by replacing, enhancing, or providing similar substitute
4 resources or environments and monitoring the adverse impact and taking appropriate corrective
5 measures.

6 b. Burden on Applicant: Applicants for permits have the burden of proving that the proposed
7 development is consistent with the criteria set forth in the Shoreline Master Program and the
8 Shoreline Management Act, including demonstrating all reasonable efforts have been taken to
9 provide sufficient mitigation such that the activity does not result in net loss of ecological functions.

10 26. As determined in Finding of Fact No. 5, the proposal will result in no net loss of ecological
11 functions and processes. This was expressly determined in the critical areas report, Ex. 6. The
12 substantial amount of mitigation and restoration integrated into the proposal provides solid support
13 for this determination. Mitigating sequencing has been properly met as previously concluded by
14 minimizing encroachments into the shoreline and wetland buffers by limiting the trail to the existing
15 trail footprint, including measures to prevent trail users from leaving the trail area. Remaining
16 impacts are amply mitigated and compensated for by integration of extensive on-site restoration and
17 replanting.

18 **RMC 4-3-090(D)(4)(d)(i):** Design Criteria for Public Access Sites: Public access shall incorporate
19 the following location and design criteria:

20 i. Walkways or Trails Required in Vegetated Open Space: Public access on sites where vegetated
21 open space is provided along the shoreline shall consist of a public pedestrian walkway parallel to
22 the OHWM of the property. The walkway shall be buffered from sensitive ecological features, may be
23 set back from the water's edge, and may provide limited and controlled access to sensitive features
24 and the water's edge where appropriate. Fencing may be provided to control damage to plants and
25 other sensitive ecological features and where appropriate. Trails shall be constructed of permeable
26 materials and limited to four feet (4') to six feet (6') in width to reduce impacts to ecologically
sensitive resources...

iv. Resolution of Different Standards: Where City trail or transportation plans and development
standards specify dimensions that differ from those in subsections D4di, D4dii, or D4diii of this
Section, the standard that best serves public access, while recognizing constraints of protection and
enhancement of ecological functions, shall prevail.

27. The criterion is met. The proposed trail generally runs parallel to the shoreline as required
above and avoids direct access to the shoreline except for the proposed bridge in order to protect the
sensitive ecological features of the riparian corridor as discussed in Conclusion of Law No. 24. Trail
width is proposed to be 12 feet with impermeable surface in violation of RMC 4-3-090(D)(4)(d)(i).
However, RMC 4-3-090(D)(4)(d)(iv), quoted above, dictates that any contrary standards in the City's
Trails and Bicycle Master Plan should prevail. Page 152 and 153 of the Master Plan sets some design
standards for the proposed trail segment, specifying a minimum width of ten feet, a "preferred" width
of 12 feet and that the proposal should be "paved". Although it is somewhat debatable whether 12
instead of 10 feet should apply and also whether "paved" precludes the use of pervious pavement,

1 some flexibility is justified since the applicant does qualify for a variance to the same width and
2 permeability standards for the portions of the trail within wetland buffers (see analysis below). Given
3 that most of the work would have already been done for the wetland buffer trail variance request, the
4 applicant should have applied for a variance to the width and permeability standards of RMC 4-3-
5 090(D)(4)(d)(i) as well. However, given that one can reasonably argue that the Master Plan calls for a
6 12 foot trail width and that the City Council likely did not intend that the paving requirement would
include the somewhat exotic concept of permeable pavement when they adopted the Master Plan, the
Master Plan will be construed as requiring 12 foot trail width and impervious surface that is contrary
to RMC 4-3-090(D)(4)(d)(i) and therefor supersedes it.

7 **RMC 4-3-090(D)(4)(f)(Springbrook/Black River Reach):** *Public physical access from a trail*
8 *parallel to the water should be provided as private lands redevelop. Expansion of public access in the*
9 *Black River Riparian Forest should occur only if consistent with ecological functions. A trail system*
10 *is present on the west side of the stream adjacent to the sewage treatment plant and should be*
11 *retained and possibly enhanced to connect to the Lake to Sound Trail.*

12 28. As previously noted, the proposed improvements seek to improve the existing trail to
ultimately connect it to the Lake to Sound Trail while not creating any significant damage to
ecological function as contemplated in RMC 4-3-090(D)(4)(f) as quoted above.

13 **RMC 4-3-090(D)(5): Building and Development Location – Shoreline Orientation:**

14 *a. General: Shoreline developments shall locate the water-dependent, water-related, and water-*
15 *enjoyment portions of their developments along the shoreline. Development and use shall be designed*
16 *in a manner that directs land alteration to the least sensitive portions of the site to maximize*
17 *vegetation conservation; minimize impervious surfaces and runoff; protect riparian, nearshore and*
18 *wetland habitats; protect wildlife and habitats; protect archaeological, historic and cultural*
19 *resources; and preserve aesthetic values.*

20 *b. Design and Performance Standards:*

21 *i. Location of Development: Development and use shall be designed in a manner that directs land*
22 *alteration to the least sensitive portions of the site.*

23 *ii. Stream/Lake Study Required: An assessment of the existing ecological functions provided by*
24 *topographic, physical, and vegetation characteristics of the site shall accompany development*
25 *proposals; provided, that an individual single family residence on a parcel less than twenty thousand*
26 *(20,000) square feet shall not be subject to this requirement. Such assessments shall include the*
following general information:

(a) Impacts of the proposed use/development on ecological functions with clear designation of
existing and proposed routes for water flow, wildlife movement, and other features.

(b) Infrastructure requirements such as parking, services, lighting and other features, together with
the effects of those infrastructure improvements on shoreline ecological functions.

iii. Minimization of Site Alteration: Development shall minimize site alteration in sites with
substantial unaltered natural features by applying the following criteria:

(a) Vehicle and pedestrian circulation systems shall be designed to limit clearing, grading, and
alteration of topography and natural features.

1 *(b) Impervious surfacing for parking lot/space areas shall be limited through the use of under-*
2 *building parking or permeable surfaces where feasible.*

3 *(c) Utilities shall share roadway and driveway corridors and rights-of-way wherever feasible.*

4 *(d) Development shall be located and designed to avoid the need for structural shoreline stabilization*
5 *over the life of the development. Exceptions may be made for the limited instances where stabilization*
6 *is necessary to protect allowed uses, particularly water-dependent uses, where no alternative*
7 *locations are available and no net loss of ecological functions will result.*

8 29. The criterion is met. The trail, which qualifies as a water-enjoyment use, is located close to the
9 shoreline while minimizing adverse environmental impacts by using the footprint of an existing trail
10 and integrating mitigation measures that will prevent the public from straying off the trail to areas that
11 may adversely affect Great Blue Heron nesting areas and riparian habitat necessary to serve protected
12 fish. Due to its location in the existing trail footprint and the location of the proposed bridge away
13 from heron nesting sites, the proposal has been designed to be located in the least sensitive areas of
14 the project site as well as the portions of the site that would necessitate the least site alteration. The
15 proposed bridge will provide direct visual and physical access to the Black River shoreline in an area
16 that is located away from the heron nesting sites. As determined in Finding of Fact No. 5, the
17 proposal is mitigated and conditioned to prevent adverse impacts to wetlands, streams and fish and
18 wildlife habitat. The proposal adequately protects against adverse impacts to archaeological/cultural
19 resources. The Washington State Department of Archaeology and Historic Preservation and other
20 potentially interested agencies were notified of the proposal and did not make any comment on the
21 potential presence of artifacts at the project site. An MDNS mitigation measure protects
22 archaeological/cultural resources by requiring construction to stop if any such resources are found
23 during construction. The proposal will have minimal aesthetic impact and will ultimately enhance
24 riparian corridor aesthetics by mitigation measures requiring replanting with native vegetation. A
25 stream study, Ex. 7, as well as a critical areas report that addressed stream impacts, Ex. 6, was
26 prepared by the applicant as required by the criterion quoted above. The reports do not address
infrastructure needs, however as noted at page 24 of the staff report the only infrastructure needs that
would be reasonably expected from the proposal is parking and as determined elsewhere in this
decision parking cannot be feasibly be added to this portion of the Lake to Sound trail.

19 **RMC 4-3-090(D)(6): Archaeological, Historical, and Cultural Resources:**

20 *a. Detailed Cultural Assessments May Be Required: The City will work with tribal, State, Federal,*
21 *and other local governments as appropriate to identify significant local historical, cultural, and*
22 *archaeological sites in observance of applicable State and Federal laws protecting such information*
23 *from general public disclosure. Detailed cultural assessments may be required in areas with*
24 *undocumented resources based on the probability of the presence of cultural resources.*

25 *b. Coordination Encouraged: Owners of property containing identified or probable historical,*
26 *cultural, or archaeological sites are encouraged to coordinate well in advance of application for*
development to assure that appropriate agencies such as the Washington State Department of
Archaeology and Historic Preservation, affected tribes, and historic preservation groups have ample
time to assess the site and identify the potential for cultural resources.

1 *c. Detailed Cultural Assessments Required: Upon receipt of application for a development in an area*
2 *of known or probable cultural resources, the City shall require a site assessment by a qualified*
3 *professional archaeologist or historic preservation professional and ensure review by qualified*
4 *parties including the Washington State Department of Archaeology and Historic Preservation,*
5 *affected tribes, and historic preservation groups.*

6 *d. Work to Stop Upon Discovery: If historical, cultural, or archaeological sites or artifacts are*
7 *discovered in the process of development, work on that portion of the site shall be stopped*
8 *immediately, the site secured, and the find reported as soon as possible to the Administrator of the*
9 *Department of Community and Economic Development or designee. Upon notification of such find,*
10 *the property owner shall notify the Washington State Department of Archaeology and Historic*
11 *Preservation and affected tribes. The Administrator of the Department of Community and Economic*
12 *Development or designee shall provide for a site investigation by a qualified professional and may*
13 *provide for avoidance, or conservation of the resources, in coordination with appropriate agencies.*

14 30. The criterion is met. There is nothing in the record to suggest that archaeological/cultural
15 resources may be present at the project site and as previously noted notice of the application was
16 submitted to the Washington State Department of Archaeology and Historic Preservation and other
17 potentially interested agencies and no comments were received about a likelihood of
18 archaeological/cultural resources. In the absence of any indication from staff or other interested
19 parties that archaeological/cultural resources may be present, no requirement for additional study is
20 warranted under the criterion quoted above. The MDNS conditions of approval require work to stop
21 as required by the criterion quoted above should archaeological/cultural resources be discovered
22 during construction.

23 **Table 4-3-090(E)(1) Shoreline Use Table:** [The SMP use table authorizes trails within the Natural
24 environmental with a hearing examiner conditional use permit subject to the following limitation:]
25 *Provided that the use does not degrade the ecological functions or natural character of the shoreline*
26 *area.*

31. As determined in Finding of Fact No. 5, the proposed trail will result in no net loss of
ecological function and will in fact improve upon ecological function, so the proposal is not
considered to degrade ecological function as prohibited by the SMP use table. Given the relatively
benign and low intense character of the proposed use, the proposal is also not considered to degrade
the natural character of the shoreline area.

RMC 4-3-090(E)(8): Recreation:

a. When Allowed: Recreation activities are allowed when:

i. There is no net loss of ecological functions, including on- and off-site mitigation.

*ii. Water-related and water-enjoyment uses do not displace water-dependent uses and are consistent
with existing water-related and water-enjoyment uses.*

*iii. The level of human activity involved in passive or active recreation shall be appropriate to the
ecological features and shoreline environment...*

b. Location Relative to the Shoreline: Activities provided by recreational facilities must bear a substantial relationship to the shoreline, or provide physical or visual access to the shoreline.

i. Water-dependent recreation such as fishing, swimming, boating, and wading should be located on the shoreline.

ii. Water-related recreation such as picnicking, hiking, and walking should be located near the shoreline. ...

d. Public Recreation: Public recreation uses shall be permitted within the shoreline only when the following criteria are considered:

i. The natural character of the shoreline is preserved and the resources and ecology of the shoreline are protected.

ii. Accessibility to the water's edge is provided consistent with public safety needs and in consideration of natural features.

iii. Recreational development shall be of such variety as to satisfy the diversity of demands of the local community.

iv. Water-related and water-enjoyment uses do not displace water-dependent uses and uses are consistent with existing water-related and water-enjoyment uses.

v. Recreational development is located and designed to minimize detrimental impact on the adjoining property.

vi. The development provides parking and other necessary facilities to handle the designed public use...

viii. Public parks and other public lands shall be managed in a manner that provides a balance between providing opportunities for recreation and restoration and enhancement of the shoreline. Major park development shall be approved only after a master planning process that provides for a balance of these elements.

32. The criterion is met. As previously discussed there is no net loss in ecological function associated with the proposal. No water-dependent use will be displaced by the proposal. The level of human activity is limited to walking, bicycling and similar non-motorized endeavors and should have little impact on the shoreline habitat given the measures taken to keep trail users on the trail. As previously discussed, the extensive restoration and mitigation associated with the proposal is well balanced with public recreational needs.

RMC 4-3-0090(E)(10): Transportation:

a. General Standards: New and expanded transportation facilities shall be designed to achieve no net loss of ecological functions within the shoreline. To the maximum extent feasible the following standards shall be applied to all transportation projects and facilities:

i. Facilities shall be located outside of the shoreline jurisdiction and as far from the land/water interface as possible. Expansion of existing transportation facilities shall include analysis of system options that assess the potential for alternative routes outside shoreline jurisdiction or set back further from the land/water interface.

ii. Facilities shall be located and designed to avoid significant natural, historical, archaeological, or cultural sites, and mitigate unavoidable impacts.

- 1 *iii. Facilities shall be designed and maintained to prevent soil erosion, to permit natural movement of*
2 *groundwater, and not adversely affect water quality or aquatic plants and animals over the life of the*
3 *facility.*
4 *iv. All debris and other waste materials from construction shall be disposed of in such a way as to*
5 *prevent their entry by erosion into any water body and shall be specified in submittal materials.*
6 *v. Facilities shall avoid the need for shoreline protection.*
7 *vi. Facilities shall allow passage of flood waters, fish passage, and wildlife movement by using*
8 *bridges with the longest span feasible or when bridges are not feasible, culverts and other features*
9 *that provide for these functions.*
10 *vii. Facilities shall be designed to accommodate as many compatible uses as feasible, including, but*
11 *not limited to: utilities, viewpoint, public access, or trails.*

12 33. The criterion is met. As determined in Finding of Fact No. 5, the proposal will result in no net
13 loss of ecological function. The transportation regulations above that require facilities to be located
14 as far away from shorelines as possible conflict with the policies that require recreational facilities
15 and public access facilities to be located close to the shoreline. Given that the public
16 access/recreational policies are more specifically targeted at the project and that shoreline policies
17 strongly encourage public access to the shoreline, the public access/recreational regulations supersede
18 the conflicting transportation facility regulations. As determined in Finding of Fact No. 5, there are
19 no adverse impacts to archaeological, natural, historical, or cultural resources. As determined in
20 Finding of Fact No. 5 the project will not adversely affect water quality, floodplains or aquatic plants
21 or animals. The bridge will be located at an elevation of six feet above 100 year flooding of the
22 stream, so the passage of floodwaters will not be materially affected by the proposed bridge.
23 Erosion during construction and construction debris is addressed in detail in the mitigation measures
24 that apply to the project and there is nothing to suggest that erosion will be a problem once
25 construction is completed. The trail does not trigger any significant need for shoreline protection.
26 The trail provides both viewpoint and physical access features via the proposed bridge.

RMC 4-3-090(E)(10)(d): Trails:

- 18 *i. Trails that provide public access on or near the water shall be located, designed, and maintained in*
19 *a manner that protects the existing environment and shoreline ecological functions. Preservation or*
20 *improvement of the natural amenities shall be a basic consideration in the design of shoreline trails.*
21 *ii. The location and design of trails shall create the minimum impact on adjacent property owners*
22 *including privacy and noise...*
23 *iv. Trail width and surface materials shall be appropriate for the context with narrow soft surface*
24 *trails in areas of high ecological sensitivity where the physical impacts of the trail and the number of*
25 *users should be minimized with wider hard-surfaced trails with higher use located in less*
26 *ecologically sensitive areas.*

24 34. The criterion is met. As determined in Finding of Fact No. 5 the trail is designed to avoid
25 environmental impacts and there are no significant impacts anticipated on adjoining property owners.
26 The trail width is comparatively wide to the existing trail and may be subject to high use, but there is

significant separation from the shoreline and ecological functions are well protected by the extensive mitigation imposed for the project.

RMC 4-3-090(F)(1)(a): *Standard Vegetation Conservation Buffer Width: Except as otherwise specified in this Section, water bodies defined as shorelines shall have a minimum one hundred foot (100') vegetation management buffer measured from the OHWM of the regulated shoreline of the State. Where streams enter or exit pipes, the buffer shall be measured perpendicular to the OHWM from the end of the pipe along the open channel section of the stream.*

RMC 4-3-090(F)(1)(d)(a): *Areas approved for water-dependent use or public access may be excluded from vegetated buffer if the approval is granted through review of a Substantial Development Permit, Conditional Use Permit, or variance; provided, that the area excluded is the minimum needed to provide for the water-dependent use or public access.*

35. Portions of the proposed trail are located within the 100 foot vegetation conservation buffer, but they are authorized in that area pursuant to RMC 4-3-090(F)(1)(d)(a) because the trail qualifies as public access and a shoreline conditional use permit is approved for the trail via this decision. The area excluded is the minimum area needed for public access since the applicant has taken extraordinary effort to avoid the sensitive areas of the riparian corridor by building within an existing trail footprint and placing the bridge as far from the most sensitive portions of the riparian corridor as possible. Deference is given to the government agencies involved in the project as to whether the trail width is the minimum necessary. Given the financial constraints of building a 12 mile trail and the environmental and recreational expertise of the agencies involved, the preponderance of evidence establishes that the trail width is the minimum necessary to meet the public access objectives of the proposal.

Table 4-3-090(F)(1)(I) – Vegetation Conservation Standards by Reach (Springbrook/Black River): *Public open space that exceeds buffer standards should be maintained and native vegetation enhanced. Full standard buffers should be provided upon redevelopment of adjacent land, recognizing the constraints of existing transportation and public facilities.*

36. The criterion is met. The majority of the riparian corridor at the project site located outside the 100 foot buffer will remain undeveloped and the applicant proposes a significant amount of native vegetation enhancement for this area.

Variance Criteria

The applicant proposes an impermeable twelve foot wide trail that at some points will be located within the inner 50% of wetland buffers. RMC 4-3-050D.2.d.ix.f limits the trail width to four feet, requires the trail to be permeable and limits trail location to the outer 50% of wetland buffers. The applicant requests a variance to all of these standards. Applicable variance criteria are addressed below.

1 **RMC 4-3-190(I)(4)(b)(i):** *Exceptional or extraordinary circumstances or conditions applying to*
2 *the subject property, or to the intended use thereof, that do not apply generally to other properties on*
3 *shorelines in the same vicinity.*

4 37. The criterion is met. The property is characterized by exceptional and extraordinary
5 circumstances because it is uniquely situated to provide public access to the shoreline while also
6 serving as an essential link of the 12 mile Lake to Sound trail. Additional exceptional and
7 extraordinary circumstances are that the trail can be placed within the footprint of an existing trail and
8 such a placement can minimize adverse environmental impacts by avoiding placement in more
9 environmentally sensitive portions of the project site.

10 **RMC 4-3-190(I)(4)(b)(ii):** *The variance permit is necessary for the preservation and enjoyment of a*
11 *substantial property right of the Applicant possessed by the owners of other properties on shorelines*
12 *in the same vicinity.*

13 38. The criterion is met. As noted at page 35 of the staff report, in the applicant's narrative, the
14 requested design standard variance is necessary in order to meet Federal and State design standards
15 and to provide for consistency in the overall design of the regional Lake to Sound trail. The requested
16 modifications are the minimum request to allow the City the same rights for a multipurpose trail as
17 other public property owners in the same vicinity. Denying the ordinance would deprive the City and
18 all users of the regional trail a regional trail with uniform construction design, which should be
19 considered a substantial property right.

20 **RMC 4-3-190(I)(4)(b)(iii):** *The variance permit will not be materially detrimental to the public*
21 *welfare or injurious to property on the shorelines in the same vicinity.*

22 39. The criterion is met. As determined in Finding of Fact No. 5, the proposal will not create any
23 adverse impacts and will improve upon ecological functions and provide a valuable recreational asset
24 to the community. Under these circumstances there is no material detriment and no injury to other
25 properties.

26 **RMC 4-3-190(I)(4)(b)(iv):** *The variance granted will be in harmony with the general purpose and*
intent of the Shoreline Master Program.

40. The criterion is met. The proposal is consistent with all applicable shoreline policies and
regulations as outlined in the bulk of this decision. The overall objective of the goals of the shoreline
management act and the SMP is to protect shoreline resources while providing for public enjoyment
of the shorelines. The proposal accomplishes both objectives by providing for public access and
improving upon ecological function.

RMC 4-3-190(I)(4)(b)(v): *The public welfare and interest will be preserved; if more harm will be*
done to the area by granting the variance than would be done to the Applicant by denying it, the
variance shall be denied, but each property owner shall be entitled to the reasonable use and

development of his lands as long as such use and development is in harmony with the general purpose and intent of the Shoreline Management Act of 1971, and the provisions of the Shoreline Master Program.

41. The criterion is met. More harm will be done by denying the variance than approving it since the variance will facilitate public access to a shoreline for a project that, if approved, will also benefit the shoreline environment. The variance is also necessary for the reasonable use of the property given (1) the relatively modest deviation involved given the existing trail development; (2) the substantial public benefit served by the proposal; (4) the substantial need for the deviation in order to make the trail design consistent with the rest of the regional trail and consistent with state and federal design standards; and (5) the lack of any adverse impacts associated with the request. As determined in the previous conclusion of law, the variance request is consistent with the purpose and intent of the Shoreline Management Act and the SMP.

RMC 4-3-190(I)(4)(b)(vi): *The proposal meets the variance criteria in WAC 173-27-170.*

WAC 173-27-170:

(1) Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.

(2) Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), as defined in RCW90.58.030 (2)(b), and/or landward of any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:

(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;
(b) That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;

(c) That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;

(d) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;

(e) That the variance requested is the minimum necessary to afford relief; and

(f) That the public interest will suffer no substantial detrimental effect.

(3) Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined in RCW90.58.030 (2)(b), or within any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:

(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property;

1 *(b) That the proposal is consistent with the criteria established under subsection (2)(b) through (f) of*
2 *this section; and*

3 *(c) That the public rights of navigation and use of the shorelines will not be adversely affected.*

4 *(4) In the granting of all variance permits, consideration shall be given to the cumulative impact of*
5 *additional requests for like actions in the area. For example if variances were granted to other*
6 *developments and/or uses in the area where similar circumstances exist the total of the variances*
7 *shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial*
8 *adverse effects to the shoreline environment.*

9 *(5) Variances from the use regulations of the master program are prohibited.*

10 42. The criterion is met. Denial of the variance would thwart the policies of RCW 90.58.020
11 because it would deny the public of an exceptional opportunity to have access and enjoyment of
12 shoreline resources coupled with a proposal that will enhance and improve upon shoreline ecological
13 function. The hardship addressed by the variance request is caused by the extraordinary
14 circumstances related to the physical characteristics and location of the property as identified in
15 Conclusion of Law No. 37. The width, location and permeability standards subject to the variance
16 precludes and significantly interferes with a reasonable use of property as contemplated in WAC 173-
17 27-170(2)(a) for the reasons identified in Conclusion of Law No. 41. As determined in Finding of
18 Fact No. 5 the proposal will not create any significant adverse impacts and will improve upon
19 ecological function so the public interest shall suffer no substantial detrimental effect. The hardship
20 caused by the SMP standards is caused by the abundance of wetlands and sensitive environmental
21 resources of the property, such that there is no place to configure a trail in the available open space
22 that would avoid SMP restrictions. As determined in Finding of Fact No. 5 the proposal is fully
23 compatible with surrounding uses and will not adversely affect the shoreline environment. No special
24 privilege is involved, as the entire 12 mile regional trail will have the same design standards as those
25 involved in the proposal. The variance is the minimum necessary to afford relief in order to provide
26 for consistency in overall regional trail design, to provide for consistency with state and federal
design standards and to provide what government agencies have determined to be minimum standards
for an adequately functioning regional trail. The overwater criteria of WAC 173-27-170(3) do not
apply to the proposal because none of the portions of the trail subject to the variance (those within
wetland buffers, which does not include the bridge) are constructed waterward of the ordinary high
water mark of the stream or the project wetlands.

Conditional Use Criteria

21 **RMC 4-9-190(I)(5)(b)(i):** *The use must be compatible with other permitted uses within that area.*

22 43. As determined in Finding of Fact No. 5, the use is consistent with other permitted uses within
23 the area.

24 **RMC 4-9-190(I)(5)(b)(ii):** *The use will not interfere with the public use of public shorelines.*

44. As determined in Finding of Fact No. 5, the proposal will not interfere with public use of the shorelines and is in fact designed to enhance public use.

RMC 4-9-190(I)(5)(b)(iii): *Design of the site will be compatible with the surroundings and the Shoreline Master Program.*

45. Coupled with its extensive mitigation, the proposal is designed to be fully compatible with its surroundings and the Shoreline Master Program since the project design does not create any significant adverse impacts to the shoreline environment while at the same time enhancing public access and shoreline resources.

RMC 4-9-190(I)(5)(b)(iv): *The use shall be in harmony with the general purpose and intent of the Shoreline Master Program.*

46. As amply demonstrated in the application of numerous shoreline policies and regulations in this decision, the proposal is in harmony with the general purpose and intent of the SMP. The proposal enhances public shoreline access and shoreline resources.

RMC 4-9-190(I)(5)(b)(v): *The use meets the conditional use criteria in WAC 173-27-160.*

WAC 173-27-160: *The purpose of a conditional use permit is to provide a system within the master program which allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.*

(1) Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:

(a) That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;

(b) That the proposed use will not interfere with the normal public use of public shorelines;

(c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;

(d) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and

(e) That the public interest suffers no substantial detrimental effect.

(2) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

47. The proposal meets all the WAC conditional use criteria for reasons previously identified in the application of other duplicative criteria. The only criteria that hasn't been addressed is

1 cumulative impacts. Since the proposal overall will improve upon ecological function, any
2 cumulative impact for similarly designed projects will only serve to further improve upon ecological
3 function and will not result in any cumulative adverse impacts.

4 **DECISION**

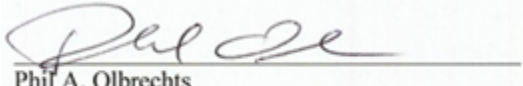
5 The shoreline substantial development permit, shoreline conditional use permit and shoreline
6 variance applications are consistent with all of the review criteria identified in this decision for the
7 reasons identified in the Conclusions of Law. Consequently, all three shoreline permits are
8 approved subject to the following conditions:

- 9 1. The applicant shall demonstrate to the satisfaction of staff that as required by RMC 4-3-
10 090(D)(2)(d)(x)(b) the proposed wetland mitigation complies with the applicable standards
11 for studies and assessment in Chapter 6 of¹: Washington State Department of Ecology, U.S.
12 Army Corps of Engineers Seattle District, and U.S. Environmental Protection Agency
13 Region 10, March 2006; Wetland Mitigation in Washington State – Part 1: Agency Policies
14 and Guidance (Version 1); and Washington State Department of Ecology Publication No.
15 06-06-011a, Olympia, WA, except in cases when this Code provides differing standards.
- 16 2. As discussed in Conclusion of Law No. 22, all mitigation areas shall be permanently
17 protected and managed to prevent degradation and ensure protection of critical area
18 functions and values into perpetuity. Permanent protection shall be achieved through deed
19 restriction or other protective covenant in accordance with RMC 4-3-050E4.
- 20 3. Staff shall have the authority to extend the five year monitoring proposed by the applicant to
21 ten years under the circumstances authorized by RMC 4-3-090(D)(2)(d)(x)(l).
- 22 4. The Applicant will post a performance surety as required by RMC 4-3-050(M)(16).
- 23 5. As outlined in Conclusion of Law No. 20, the applicant shall either acquire a letter of
24 exemption to critical area slope standards or shall acquire a variance or other code
25 authorized approval to build the proposed bridge within the 15 foot buffer to protected
26 slopes. In the alternative the bridge can be redesigned to comply with the buffer requirement.
6. The applicant shall comply with the mitigation measures issued as part of the Determination
of Non-Significance Mitigated, dated January 14, 2016.

¹ Although these references appear to be unintelligible, they are taken verbatim from RMC 4-3-090(D)(2)(d)(x)(b).

- 1 7. Fencing, signage and replanting measures recommended by the studies entered into the
2 administrative record shall be considered conditions of approval. The specific locations of
3 these mitigation measures shall be incorporated into the 90% construction drawings subject
4 to the approval of planning staff.

5 DATED this 2nd day of March, 2016.

6 
Phil A. Olbrechts

7 City of Renton Hearing Examiner
8
9

10 **Appeal Right and Valuation Notices**

11 RMC 4-8-110(E)(9) provides that the final decision of the hearing examiner is subject to appeal to
12 the Renton City Council. RMC 4-8-110(E)(9) requires appeals of the hearing examiner's decision
13 to be filed within fourteen (14) calendar days from the date of the hearing examiner's decision. A
14 request for reconsideration to the hearing e examiner may also be filed within this 14 day appeal
15 period as identified in RMC 4-8-110(E)(8) and RMC 4-8-100(G)(4). A new fourteen (14) day
16 appeal period shall commence upon the issuance of the reconsideration. Additional information
17 regarding the appeal process may be obtained from the City Clerk's Office, Renton City Hall – 7th
18 floor, (425) 430-6510.

19 Affected property owners may request a change in valuation for property tax purposes
20 notwithstanding any program of revaluation.
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